

## Courtroom Minute Entry

Room: Beckley  
Caption: USA v. Mark Holdren, ET AL.

Case No.: 5:23-cr-00188  
Judge: Omar Aboulhosn

Type: Motion Hearing

Started: 5/1/2024 1:43:37 PM  
Ends: 5/1/2024 2:40:06 PM Length: 00:56:30

1:43:43 PM Judge Omar Aboulhosn  
1:43:44 PM Courtroom Deputy Tammy Davis  
1:43:45 PM AUSA Christine M. Siscaretti  
1:43:46 PM Attorneys David Schles, Richard Gunnoe, Edmund Rollo and Benjamin Bryant  
1:43:47 PM Defendants Mark Holdren, Corey Snyder, Johnathan Walters and Chad Lester  
1:43:50 PM Court Reporter: CourtSmart  
1:43:56 PM **MOTIONS HEARING – ECF DOCS. 127, 126 & 128**  
1:44:02 PM Recording Paused  
1:58:47 PM Recording Resumed  
2:04:37 PM Judge Omar Aboulhosn  
2:04:42 PM Calls case.  
2:04:47 PM We are here today on a Joint Motion for Modification of Protective Order and the Government's Response.  
2:05:06 PM Counsel notes their appearances.  
2:05:48 PM Judge Omar Aboulhosn  
2:05:51 PM Discusses email sent to counsel. I read the United States Response and their concerns – offered suggestions that could be agreed upon.  
2:05:00 PM Was there any effort in that regard?  
2:06:03 PM Attorney David Schles addresses the Court as to remaining issue regarding material reviewed at the jail.  
2:06:29 PM Judge Omar Aboulhosn  
2:07:02 PM I don't fully appreciate what that means. The United States made disclosures to counsel, correct?  
2:07:16 PM Attorney David Schles discusses contents on a secured laptop – Rule 16 Discovery excludes witness statements. We believe our clients need to have access to that whether counsel sits there with them or not.  
2:09:00 PM Judge Omar Aboulhosn  
2:09:21 PM You make a very good point. Discusses witness statements with clients.  
2:09:40 PM Attorney David Schles  
2:09:46 PM Continues to address the Court. There are just so many of them.  
2:09:55 PM Judge Omar Aboulhosn  
2:09:58 PM You have those statements. The problem is there are so many - they are voluminous and the driving to Kentucky versus having access to a secure laptop by himself with no notes, no pens, he could pull it up and read it.  
2:10:20 PM What is the government's concern about that?  
2:10:38 PM AUSA Christine M. Siscaretti  
2:10:49 PM Proffers to the Court as to the government's concern from the beginning in filing charges is witness safety.  
2:11:01 PM Judge Omar Aboulhosn  
2:11:07 PM That is the Court's primary concern as well. Where is the additional safety risk?  
2:11:08 PM AUSA Christine M. Siscaretti  
2:11:27 PM Proffers to the Court as to a protective factor built in – in having unfettered access.  
2:11:38 PM Judge Omar Aboulhosn  
2:12:08 PM Has there been a change of circumstance in viewing that one on one due to voluminous amount?  
2:12:10 PM AUSA Christine M. Siscaretti  
2:12:31 PM Proffers to the Court  
2:12:40 PM We propose putting all Rule 16 docs. on a laptop but the witness statements – to give defendants extra time.  
2:12:59 PM Judge Omar Aboulhosn  
2:13:28 PM How many witness statements are we talking?  
2:13:30 PM AUSA Christine  
2:13:36 PM Near 25 to 30, your honor.  
2:13:43 PM We have turned over about 12 pages.  
2:14:07 PM Judge Omar Aboulhosn  
2:14:16 PM Why not give them the ability to review that material with a 2-hour time limit, for example?  
2:14:18 PM Discusses possible way for defendants to review the witness statements.  
2:14:49 PM Discusses disclosures made already. I don't want to discourage you from making future disclosures.  
2:15:22 PM AUSA Christine M. Siscaretti  
2:15:45 PM Proffers to the Court.  
2:16:09 PM

2:16:35 PM Discusses the logistics of that – adding the additional burden on the facility to facilitate that, your honor.

2:17:24 PM Judge Omar Aboulhosn

2:17:27 PM Discusses putting that on a jump drive. Let me have a discussion with defense counsel.

2:17:47 PM Attorney David Schles

2:17:55 PM Proffers to the Court as to many more interviews – some are not consistent. Discusses Rule 16A(1)(e).

2:19:30 PM Judge Omar Aboulhosn

2:19:32 PM I was throwing out a number - a suggestion to see if I could move the needle any to get some agreement.

2:19:45 PM Attorney David Schles

2:19:50 PM Continues with proffer as to one room with one laptop and four defendants. There will be limited time for that.

2:21:33 PM Judge Omar Aboulhosn

2:21:35 PM Counsel, do you want to respond to that? What is the increased risk?

2:21:43 PM AUSA Christine Siscaretti

2:21:46 PM Proffers to the Court to nature and the allegations – need extra protection for the witnesses. Discusses

2:23:20 PM turning over more discovery. That was not a mutual requirement.

2:23:27 PM Judge Omar Aboulhosn

2:23:29 PM What is the harm to let them prepare for trial? We are all concerned with safety, but you haven't given me

2:23:30 PM anything tangible. As officers of the Court, we are all concerned with witness safety.

2:23:58 PM If counsel sat with their clients for unlimited hours, how is there any more increased risk than the ability to

2:24:17 PM look at it without counsel being present?

2:24:31 PM AUSA Christine M. Siscaretti

2:24:36 PM Proffers to the Court as to the government's position – the importance of staying away from witnesses.

2:25:00 PM Judge Omar Aboulhosn

2:25:03 PM I am all about witness safety. I don't see where the increased risk occurs if counsel is not with his client.

2:25:44 PM Where is the increased risk if they have the ability to review whether counsel is present or not?

2:26:06 PM AUSA Christine Siscaretti

2:26:09 PM Discusses witness safety.

2:26:15 PM Judge Omar Aboulhosn

2:26:18 PM Allowing access on the computer. I am sure the jail is monitoring that. If there is any issue, we shut it

2:26:39 PM down instantaneously?

2:27:10 PM If they abuse the computer system, we can shut it down as quick as it is set up. Would that not be a safeguard?

2:27:30 PM AUSA Christine Siscaretti

2:27:33 PM That is something we can monitor. Discusses if there is a breach, your honor.

2:27:51 PM Judge Omar Aboulhosn

2:27:58 PM They have the ability to breach that right now. I am trying to find a realistic middle ground here.

2:28:15 PM AUSA Christine Siscaretti

2:28:18 PM Proffers to the Court as to why there was a Protective Order put in place in this case.

2:28:40 PM Judge Omar Aboulhosn

2:28:42 PM Let me take a minute.

2:30:15 PM The only change would be paragraph 5 in the Protective Order regarding restricted access.

2:30:31 PM That would be the only modification of the Order.

2:30:45 PM Attorney David Schles

2:30:49 PM Proffers to the Court as to the meaning of the Protective Order. They will look at words on a screen.

2:31:30 PM Judge Omar Aboulhosn

2:31:33 PM I am having trouble not finding merit in their argument - whether counsel is physically next to them or not.

2:32:21 PM Attorney David Schles

2:33:14 PM Addresses the Court as to witness contact through counsel. Discusses critical video.

2:33:46 PM Judge Omar Aboulhosn

2:33:49 PM What have you agreed to as far as everything else besides the statements?

2:34:07 PM Attorney David Schles

2:34:13 PM Ms. Siscaretti sent us an email yesterday.

2:34:40 PM Judge Omar Aboulhosn

2:34:42 PM May I see that email? Discusses the part that is in dispute.

2:35:54 PM It seems the provisions outlined are reasonable except portion of witness statements. I will rule all

2:36:00 PM material be provided and be accessible to them on a computer. I don't think the government has

2:36:20 PM sustained the argument that increases risk to witnesses.

2:36:38 PM I will be glad to Stay that if the United States asks me to do so to appeal that to Judge Goodwin?

2:36:49 PM AUSA Christine Siscaretti

2:36:51 PM That is not necessary, your honor.

2:36:55 PM Judge Omar Aboulhosn

2:36:58 PM I would ask counsel forward to me that portion of that email and I will take out the part that I am saying I

2:37:00 PM am not agreeing with the United States on and enter an Order modifying that.

2:37:29 PM Or if you want to send to me a proposed order that basically says that?

2:37:42 PM AUSA Christine Siscaretti  
2:37:47 PM Just Chief Shawn Moore and one more investigator in his office to have access – reaching out to FPD  
2:38:15 PM Wes Page about the laptop from FPD Office.  
2:38:17 PM Judge Omar Aboulhosn  
2:38:20 PM However you want to title it or send to me as an Amended Protective Order?  
2:38:36 PM Attorney David Schles  
2:38:44 PM Discusses FPD has resources we do not have.  
2:39:03 PM Judge Omar Aboulhosn  
2:39:08 PM **The Court will overrule of the government's partial objection to the disclosure of witness statements.**  
2:39:20 PM I will await an email or pleading with proposed amended order.  
2:39:40 PM AUSA Christine Siscaretti  
2:39:42 PM The government can draft a proposal and sent it to the parties.  
2:39:51 PM Judge Omar Aboulhosn  
2:39:52 PM That is fine. However, I get it, I will enter it promptly. Is there anything else to take care of?  
Hearing adjourned.